account of their inability to adhere to the truth. But where the accused person in a bribery case pleads and produces evidence of good character which the court regards as satisfactory, and if it appears to the court that a person possessing such a character would not be likely to act, in the circumstances proved to have existed at the time, in the manner alleged by the prosecution, such improbability must be taken into account in determining the question whether or not there is reasonable doubt as to the guilt of such accused person. This issue was raised and considered by Cornelius J. (as he then was) in *Emperor* v. *Khurshid Hussain.*[17] That was an appeal against the acquittal of the respondent by the sessions judge in an appeal by the respondent from his conviction by the magistrate under section 161 of the Indian Penal Code and a sentence of 6 months imprisonment. The respondent was a superintendent employed by the Lahore Corporation. The complainant was a fodder contractor and since April 1945 had been delivering supplies of fodder for cattle under the care of the respondent. In August and September 1945 the respondent on a number of occasions rejected the fodder on the alleged ground that it was not of the requisite quality. In October 1945 the respondent demanded that the contractor should pay him a sum of money by way of illegal gratification in order to ensure smooth working for the future. The contractor filed a complaint and later a trap was laid and as a result the respondent was caught. In his possession were recovered marked notes. The respondent's immediate explanation was that the money was received by him from the contractor in part payment of a loan. He adhered to his statement at the trial and attempted to support it by production of evidence.*

In the instant case there is no positive proof as to the excellence of the appellant's character. The appellant has neither pleaded nor produced evidence of his character beyond stating his educational background and administrative experience. To say that no complaints have been lodged against him is at best a negative averment.

Appeal dismissed.

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* It would appear from *Khrushid Hussain's* case that what the accused did was to produce evidence of his excellent character in contrast to that of the complainant. The learned judge after discussing the relevancy of the evidence of the character of the respondent said: "The learned sessions judge noted that there had been no previous complaint against the accused, and even the complainant had testified that this was the first time that a bribe had been demanded from him, but the fact that there is no complaint against a person is not equivalent to his having an excellent character, and on the other hand it is not impossible that he may have been caught in his first attempt at corruption". — *Ed.* M.L.J.

CHEN CHONG & ORS. v. PUBLIC PROSECUTOR

[A.Cr.J. (Raja Azlan Shah J.) May 3, 1967]

[K.L. — Criminal Appeal No. 34 of 1967]

Penal Code, ss. 34 & 392 — Robbery — Common intention — Pre-arranged plan — Plea of guilty.

Criminal Law and Procedure — Charge — Explanation of ingredients in — Criminal Procedure Code (Cap. 6), s. 173(b).

The four appellants had pleaded guilty of charges under the Penal Code, section 392 read with section 34, to wit, in furtherence of the common intention robbed one *CTK* of a lorry carrying 188 bags of tin ore valued at $52.000. Each of them was convicted and sentenced to 3 years imprisonment. On appeal against conviction and sentence.

Held: as their pleas were unequivocal pleas of guilty made in open court in respect of facts which constituted the offence, their appeals against conviction and sentence must be dismissed.

Per Curiam: "The provision of section 173(b) of the Criminal Procedure Code seem to establish the salutary rule that before a court records a plea of guilty in reply to the common form question asking the accused to plead, it is necessary for the court as a matter of discretion to consider whether it is safe to accept the plea. The court can do that, firstly, by considering each and every ingredient of the charge; secondly, by satisfying itself by questioning the accused whether he really understands the charge and intends to admit without qualification each and every ingredient that constitutes it; and finally that he clearly understands the nature and consequences of his plea. The court then records the facts as presented by the prosecuting officer to ascertain whether admission of the facts amounts to a plea of guilty in law. Detailed attention to the facts to be recorded must obviously depend on the nature of the charge and the seriousness of the case. If the facts establish the offence charged, the accused is asked whether he admits such facts. If he does admit, then the court records the plea and proceeds to consider the question of sentence. Once the accused is sentenced then the plea ranks as a conviction. The plea must be an unequivocal plea of guilty. It is important that there should be no ambiguity in the plea. If there are elements in the case which indicate that the accused is really trying to plead not guilty or, as Lord Goddard put it, 'Guilty, but . . .', then the court has no discretion but to record a plea of Not Guilty."

Cases referred to:—

(1) *Koh Mui Keow* v. *R.* [1952] M.L.J. 214.

(2) *Low Hiong Boon* v. *Public Prosecutor* [1948-49] M.L.J. Supp. 135.

(3) *Ahmad bin Haji Tahir & Ors.* Penang — Criminal Revision No. 11 of 1958 (unreported).

(4) *R.* v. *Cole* (1965), 49 Cr. App. R. 199; [1965] 2 Q.B. 388; [1965] 2 All E.R. 29.

(5) *R.* v. *Durham Quarter Sessions, ex. p. Virgo,* [1952] 1 All E.R. 466, 469.

CRIMINAL APPEAL.

S. P. Seenivasagam (*Miss Devi* with him) for the appellants.

Che Thairah binte Suleiman (Deputy Public Prosecutor) for the respondent.

Raja Azlan Shah J.: The appellants who are in their late thirties were charged under section 392 of the Penal Code read with section

34 of the Penal Code, to wit, in furtherance of the common intention robbed one Chin Tong Kan of a lorry registration number BL. 9776 carrying 188 bags of tin ore valued at $52,000. This involved the existencec of a pre-arranged plan which is to be proved from conduct or from circumstances or from any incriminatory facts to commit the crime actually committed, that is, robbery. Robbery is defined under section 390 of the Penal Code as, *inter alia*, the causing of wrongful restraint in the commission of theft. It is significant to note that the appellants were never charged with voluntarily causing hurt in committing the robbery under section 394 of the Penal Code nor with armed robbery under section 397 of the Penal Code. They were unrepresented in the court below and each pleaded guilty to the charge.

The record reads as follows:—

"Charge read over and explained to all four accused who understand the charge.

1st accused — Pleads guilty and U.N. & C. of P.* — I accept his plea.

2nd accused — Pleads guilty and U.N. & C. of P. — I accept his plea.

3rd accused — Pleads guilty and U.N. & C. of P. — I accept his plea.

4th accused — Pleads guilty and U.N. & C. of P. — I accept his plea."

The prosecuting officer then proceeded to outline the following facts which were recorded by the learned president:—

"On 31.1.67 at about 5.00 p.m. lorry No. BL. 9776 left Gambang, Pahang, for Kuala Lumpur carrying 188 bags of tin ore valued at $52,000. The lorry was driven by one Chin Tong Kam who had an attendant Leow Soo Sang with him.

At about 11.15 p.m. the lorry corssed the Selangor-Pahang boundary and when it was near the 16th milestone Bentong-Kuala Lumpur Road a taxi, an Austin car No. H. 4319, overtook the lorry and after travelling a short distance blocked the path of the lorry and forced the lorry to stop.

As soon as the lorry stopped, 3 male Chinese rushed out, one armed with a pistol and one with a parang. They ordered the driver and attendant out of the lorry, herded them together into a ravine beside the road and tied them with rope and also gagged them.

The Austin taxi was driven by the 3rd accused.

Two other Chinese were left guarding the driver and attendant.

The lorry was driven away and so was the taxi which was later abandoned on the way to Kuala Lumpur.

At about 3.00 a.m. the following morning the two persons who guarded the lorry driver and attendant heard the sound of a car approaching and left the victims behind and went away. A short while later the lorry driver and attendant got a lift and went to Gombak police station where they lodged a report at 3.55 p.m.

Investigation started and as a result of information received a police party led by Supdt. Ko Kim Cheng raided a place near Leong Fatt Tin Mine in Serdang where the police recovered 179 bags of the 188 bags of tin ore. The 9 bags are still not recovered. 179 bags of ore P2 and lorry No. BL. 9776, P3. The same day the police arrested the 1st, 2nd and 3rd accused at Serdang New Village, the 4th at Sungei Besi New Village.

The four accused took part in the robbery and the 3rd was the one who drove the taxi which had been stolen on 31.1.67.

All four accused admit the facts."

Each of the appellants was convicted and sentenced to three years imprisonment. They now appeal against conviction and sentence.

The only substantial ground put forward by counsel on behalf of the appellants was that the provisions of section 34 of the Penal Code, which is one of the ingredients of the charge, were never adequately explained to the appellants. It was said that the record must show in what way the charge was explained to the appellants who must admit a pre-arranged plan while proceeding in the taxi. It was further said that the taxi driver could have been an innocent party for there was nothing to show he took part in the robbery. He never admitted he was mixed up with the robbery. A passage from the judgment of Brown J. in *Koh Mui Keow* v. *R.*[1] was cited in support of a re-trial:—

"In a case where the charge contains one or more ingredients or questions and the accused is not represented by counsel each ingredient and each question involved should be explained by the magistrate himself through the interpreter to the accused".

In 1948 Spenser-Wilkinson J. had occasion to say that except in a case where the facts are simple and the law applicable to those facts is beyond doubt it would be impossible to expect an accused person unversed in the law and unrepresented by counsel to be able to say, yes or no, whether he has been guilty of an offence involving difficult questions of law. (See *Low Hiong Boon* v. *Public Prosecutor.*[2]

The provisions of section 173(b) of the Criminal Procedure Code seem to establish the salutary rule that before a court records a plea of guilty in reply to the common form question asking the accused to plead, it is necessary for the court as a matter of discretion to consider whether it is safe to accept the plea. The court can do that, firstly, by considering each and every ingredient of the charge; secondly, by satisfying itself by questioning the accused whether he really understands the charge and intends to admit without qualification each and every ingredient that constitutes it; and finally that he clearly understands the nature and consequences of his plea. The court then records the facts as presented by the prosecuting officer to ascertain whether admission of the facts amounts to a plea of guilty in law. Detailed attention to the facts to be recorded must obviously depend on the nature of the charge and the seriousness of the case. [(See the judgment of Rigby J. in the unreported case of In the matter of *Ahmad bin Haji Tahir & Ors.*[3])]. If the facts establish the

* Understands the nature and consequences of the plea.

offence charged, the accused is asked whether he admits such facts. If he does admit, then the court records the plea and proceeds to consider the question of sentence. Once the accused is sentenced then the plea ranks as a conviction. (See *R.* v. *Cole*,[4]). The plea must be an unequivocal plea of guilty. It is important that there should be no ambiguity in the plea. If there are elements in the case which indicate that the accused is really trying to plead not guilty or, as Lord Goddard put it, "Guilty, but . . .", then the court has, in my view, no discretion but to record a plea of Not Guilty. [(See *R.* v. *Durham Quarter Sessions, ex parte Virgo* [5])].

If those principles are applied to the present case the answer seems very clear. The experienced president obviously through the interpreter read and explained the charge to the appellants who clearly understood it. They freely and voluntarily confessed that they were guilty of the offence of which they were charged. They understood the nature and consequences of their pleas. The facts tendered by the prosecution can be briefly stated: the appellants overtook the said lorry in a stolen taxi along the Bentong-Kuala Lumpur road and after a short distance blocked its passage and forced it to stop. Three Chinese rushed out of the said taxi and held up their victims at gun-point. The other Chinese remained at the wheel of the said taxi. Their victims were gagged, bound, and herded into a ravine and were guarded by two of the three Chinese, while the third drove away the lorry with its valuable cargo. The stolen taxi was also driven away and later abandoned. This was obviously not a one-man job and the facts clearly indicate that the appellants had a prearranged plan to commit the offence of which they were charged. They were men of mature years and they clearly admitted having committed the crime actually committed. In my judgment their pleas were unequivocal pleas of guilty made in open court to facts which amounted to pleas of guilty in law. The appeal against conviction is dismissed.

The sentence is unduly benevolent to the appellants. The appeal against sentence is also dismissed.

Appeals dismissed.

CHIN LOKE v. PUBLIC PROSECUTOR

[A.Cr.J. (Azmi C.J. (Malaya)) May 9, 1967]

[K.L. — Criminal Appeal No. 13 of 1967]

Road Traffic — Dangerous driving — Deaths caused by — Findings of fact — Road Traffic Ordinance, 1958, s. 34A(1).

Criminal Procedure — Fine — Imposition of — Where accused not in financial position to pay — Alternative sentence of imprisonment.

In this case a motor car and a lorry going in opposite directions collided with the result that the lorry with a heavy load of road metal fell over the car and practically crushed one side of it and killed four passengers in the car. Three passengers who survived the accident gave evidence and the learned president convicted the appellant (lorry driver) for driving his lorry in a manner dangerous to the public under section 34A(1) of the Road Traffic Ordinance. He imposed a fine of $3,000. On appeal,

Held: (1) there was no reason for the court to interfere with the finding of facts made by the learned president;

(2) in principle a court should not impose a fine which it knew or ought to have known that the accused was not in a financial position to pay. In this case the alternative to the fine would be a sentence of a term of years of imprisonment. The sentence of fine set aside and the appellant sentenced to one year's imprisonment.

MAGISTRATE'S CRIMINAL APPEAL.

Peter Mooney for the appellant.

Zaiton binte Othman (Deputy Public Prosecutor) for the respondent.

Azmi C.J. (Malaya): This is an appeal against the judgment of the President of the Sessions Court at Kuala Lumpur convicting the appellant on a charge of driving his motor lorry in a manner dangerous to the public, and thereby causing the death of four persons, an offence punishable under section 34A(1) of the Road Traffic Ordinance, 1958.

The appellant also appealed against the fine of $3,000 imposed by the learned president.

The facts for the prosecution may be summarised as follows: A motor car and a motor lorry going in opposite directions collided with the result that the lorry with a heavy load of road metal fell over the car and practically crashed one side of it and killed four passengers in the car. Three passengers who survived the terrible accident gave evidence for the prosecution.

According to the surviving passengers in the car there were seven of them in the car. Sitting in front and with the driver who was killed were Chan Wah Yok, P.W.4, and Sevvamanar d/o Rasiah, P.W.11 and Lalita d/o Natarajah P.W.2.

Lalita P.W.2 aged 11, could only say that a lorry was coming from the opposite direction and the next thing she knew she was in hospital.

Chan Wah Yoke, P.W. 4, a girl of 17 could only say the car met with an accident and nothing more, though she could remember sitting in front with the driver and an another woman and that they were going to Tanjong Malim to see the country.

P.W.11 Sevvamanar, a girl of 18 said that they were going to Tanjong Malim to see the country. She said that the car was driven at a moderate speed but there was no suggestion by anyone in the car to see the dredge. She remembered seeing a dredge though she could not remember anything else in reference to the accident.